

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 14, 2018

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

LOD No. S-27,947  
PSF No. 17MD-130  
Maui

*Rescind Prior Board Action of March 28, 2003, Item D-9, Consent to Assign Perpetual, Non-exclusive Access and Utility Easement [L.O.D. No. S-27947], from Ronald R. & Miriam M. Jacintho, as Assignor, to First City Corp., Assignee; Tax Map Key No: (2) 2-1-006: Por. 077;*

After-the-Fact Consent to Assignment of Grant of Non-Exclusive Easement under Land Office Deed No. S-27,947, from Ronald R. Jacintho and Miriam M. Jacintho, Assignor, to 7505 Makena Road, LLC ("7505 Makena"), Assignee; Amend Land Office Deed No. S-27,947 to allow the Easement to Run with the Land and Inure to the Benefit of the Private Property Designated as Tax Map Key: (2) 2-1-006:085;

Grant of a Term, Non-Exclusive Easement to 7505 Makena for Concrete and Rock Planter Purposes; Issuance of Immediate Right-of-Entry Permit to 7505 Makena for Concrete and Rock Planter Purposes; Assess \$700.00 in Administrative Costs Against 7505 Makena for Staff Time in Resolving Encroachment; Onau, Makawao, Makena, Maui; Tax Map Key No: (2) 2-1-006: 077 (por.)

APPLICANT:

7505 Makena Road, LLC, a Hawaii Limited Liability Company ("7505 Makena")

LEGAL REFERENCE:

Sections 171-6, -13, and -55, Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of Government lands of Onau, situated at Makawao, Makena, Maui, identified by Tax Map Key: (2) 2-1-006:077 (por.), as shown on the attached map labeled **Exhibit 1**.

ZONING:

State Land Use Commission:	Agricultural
County of Maui:	Agriculture

AREA:

LOD No. S-27,947:	1,356 sq. ft., more or less
Encroachment on State lands:	602 sq. ft., more or less

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

**I. AFTER-THE-FACT CONSENT TO ASSIGNMENT OF LOD No. S-27,947**

CHARACTER OF USE:

Right, privilege and authority to construct, reconstruct, use, operate, maintain and repair easement for access and utility purposes.

TERM OF EASEMENT:

Perpetual.

AMOUNT PAID FOR EASEMENT:

The original grantee, Robert R. Jacintho and Miriam M. Jacintho (the “Jacinthos”) under Grant of Non-Exclusive Easement, Land Office Deed No. S-27,947 (“LOD No. S-27,947”), made a one-time, lump-sum payment of \$1,400.00 for the easement in 1992.

CONSIDERATION:

According to public records, 7505 Makena acquired the parcel served by the subject easement, TMK No. (2) 2-1-006:085 (Parcel 85) for \$10.00 and other good and valuable consideration by Warranty Deed dated June 24, 2003. No separate monetary consideration was paid for the assignment of the easement rights covered by LOD No. S-27,947.

## II. ISSUANCE OF NEW TERM, NON-EXCLUSIVE EASEMENT (PSF No. 17MD-130)

### CHARACTER OF USE:

Right, privilege and authority to construct, reconstruct, use, operate, maintain, repair, replace and remove concrete and rock planters over, under and across State-owned land.

### TERM OF EASEMENT:

Fifty (50) years, with a commencement date retroactive to June 24, 2003.

### CONSIDERATION:

One-time payment to be determined by an independent appraisal, subject to review and approval by the Chairperson.

### APPLICANT'S REQUIREMENTS: Applicant shall be required to:

- 1) Pay for an appraisal to determine one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards at Applicant's own cost;
- 3) Remove the metal swinging gate at the makai end of the driveway, including removal of the support posts flush to grade; and
- 4) Pay \$700.00 in administrative costs.

### CHAPTER 343 – ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200-8, Hawaii Administrative Rules ("HAR") and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Items 46 & 51 and Exemption Class No. 6, Item 9. See **Exhibit 2**.

### DCCA VERIFICATION:

ASSIGNOR: Not applicable as they are natural persons, and are not required to register with the Department of Commerce and Consumer Affairs.

### ASSIGNEE:

Place of business registration confirmed:	YES <u>X</u>	NO <u>  </u>
Registered business name confirmed:	YES <u>X</u>	NO <u>  </u>
Good standing confirmed:	YES <u>X</u>	NO <u>  </u>

REMARKS:

Assignment and Amendment of LOD No. S-27,947:

At its meeting of April 14, 1989, under agenda item F-6, the Board of Land and Natural Resources (“Board”) approved the direct sale of a perpetual, non-exclusive easement for access and utility purposes over the subject land to the Jacinthos. They were the owners of TMK (2) 2-1-006:085 (“Parcel 85”), which borders State owned parcel, TMK (2) 2-1-006:077. The easement is the only means of access to Makena Road, and without it, Parcel 85 would be landlocked.

On November 4, 1992, the easement was granted to the Jacinthos under LOD No. S-27,947. As an older form grant of easement, LOD No. S-27,947 requires Board consent prior to any assignment. Section 5 of the document provides as follows:

5. This easement or any rights granted herein shall not be sold, assigned, conveyed, leased, mortgaged, or otherwise transferred or disposed of, directly or by operation of law, exception with the prior written consent of the Board.

At its meeting of March 28, 2003, under agenda item D-9, the Board approved the assignment of LOD No. S-27,947 to First City Corp. See **Exhibit 3** attached. However, that transaction was never consummated. Instead, on June 24, 2003, the Jacinthos conveyed Parcel 85 together with the easement to 7505 Makena, by Warranty Deed recorded in the Bureau of Conveyances on June 24, 2003 as Document No. 2003-128124. The parties neglected to obtain Board consent for this particular assignment.

Staff is recommending that the Board consent after-the-fact to the assignment of LOD No. S-27,947 to 7505 Makena and that the grant document be amended to state that the easement will run with and be appurtenant to Parcel 85, provided that the easement holder notifies the Department in writing of future assignments of the easement, and assignees are notified of the insurance requirement in writing. This will eliminate the need for Board action on future consents to assignment.

New 50-Year Term Easement for Concrete and Rock Planters (PSF No. 17MD-130):

Staff understands that at the time 7505 Makena acquired Parcel 85 from the Jacinthos, concrete and rock planters were already constructed on State land on both sides of the easement corridor (and outside of the approved easement area) without Board approval. See map attached as **Exhibit 4**. On July 17, 2017, counsel for 7505 Makena requested the amendment of LOD No. S-27,947 to include the concrete and rock planters within the area and permitted character of use of the easement. Staff responded that it did not believe the inclusion of the planters as part of this perpetual easement was in the State’s



best interests, and suggested that the planters be removed as an encroachment.

In response, counsel for 7505 Makena requested a separate 35-year term easement<sup>1</sup> to allow the encroaching planters to remain in place for that term. Staff has no objection to this request. However, staff is recommending the assessment of \$700.00 in administrative costs for staff's time in resolving the encroachment. Staff time is itemized on **Exhibit 5** attached. Although staff's information is that 7505 Makena did not itself construct the rock planters, 7505 Makena acquired private property that included improvements encroaching onto State lands and desires to retain the benefit of such improvements.

The concrete and rock planters have existed on the subject State land for at least 15 years and their initial construction fit within the Department's exemption list for minor structures accessory to existing facilities. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that documenting the encroachment caused by the concrete and rock planters with an easement would involve negligible or no expansion or change in use of the subject area beyond that previously existing, and should therefore be exempt from the preparation of an environmental assessment.

Two separate requests for comments were sent out concerning 7505 Makena's request. The first request was disseminated to agencies listed below on October 18, 2017 with the results indicated:

Agency	Comment
SHPD	No response by suspense date
Engineering	No comments
DOFAW	No comments
County of Maui – Planning	See <b>Exhibit 6</b>
County of Maui – Public Works	No comments
Office of Hawaiian Affairs	No response by suspense date

The County of Maui ("County") Planning Department recommended the following conditions be imposed by the Board:

- 1) A small engineered drywell should be constructed at the base of the driveway where it intersects Makena Road for the purpose of intercepting rainwater runoff from the driveway. As an alternative, an engineered concrete drainage way or swale could be installed so that runoff drains mauka of Makena Road.

---

<sup>1</sup> That is, a 35-year term going forward. As discussed elsewhere in the submittal, staff is recommending a 50-year term retroactive to June 24, 2003 to cover the approximately 15 years 7505 Makena has already enjoyed the benefit of the rock planters on State land.

- 2) The metal swinging gate at the makai edge of the driveway should be removed; and
- 3) The applicant must clearly understand that there is a substantial State parcel fronting its property that can be used for the public interest and public trust in the future, to include public parking for access to the Ahihi-Kinau protected area, along Makena Road, fronting the applicant's parcel.

On the first item raised by the County, although constructing a drywell or swale may be desirable for drainage purposes, staff does not believe there is a strong basis for the Board to impose such a requirement in light of the requested action (consent to the assignment of an existing access and utility easement, and grant a new term easement for the rock planters). It would have been more appropriate for the County to require construction of a drywell or swale as a condition of permitting the driveway to initially connect to Makena Road.

Regarding the second item, staff agrees that removal of the metal gate is appropriate since the access easement is a non-exclusive easement. According to counsel for 7505 Makena, her client is agreeable to removing the gate, as well as the two posts that the gate hangs from. Staff has included an Applicant Requirement above that 7505 Makena remove the metal swinging gate, including removal of the support posts flush to grade.

On the third item, as explained above the rock planters were constructed by 7505 Makena's predecessor-in-interest. 7505 Makena acquired the property on June 24, 2003 with the encroaching planters already in place. Staff believes that by seeking the term easement for the planters, 7505 Makena recognizes that the State land fronting its private property is public trust land and that 7505 Makena cannot treat the State land as an extension of its private property. Furthermore, it would be unusual to incorporate an acknowledgment such as the County recommends in a conveyance document. Accordingly, staff believes that an acknowledgment or affirmation by 7505 Makena as to the State's rights in the State land is unnecessary.

The Maui District Land Office performed its own inspection on November 24, 2017 and a copy of staff's inspection report is attached as **Exhibit 7** (without Exhibit A, which is a copy of the County's report (Exhibit 6)). The recommendation of the district office was to require 7505 Makena to remove the rock planters. As discussed above, that was the initial proposal in response to 7505 Makena's application for an easement.

At Chairperson's direction, a second request for comments was sent to DOFAW and the Division of Aquatic Resources ("DAR") on February 8, 2018. DOFAW responded with a memorandum dated February 22, 2018 explaining that DOFAW's primary concern is with access to the Ahihi-Kinau Natural Area Reserve ("AKNAR") and other lands to the east of the subject State parcel, including La Perouse Bay and private properties. DOFAW notes that Makena Road passes very near the shoreline near the easement



location, and changing shoreline conditions could threaten Makena Road and the ability of the public to access the AKNAR. If the rock planters, landscaping and lights are allowed to remain in place through an easement, and it becomes necessary to relocate Makena Road mauka in the future, the easement improvements may interfere with efforts to move the road. Additionally, DOFAW states that the AKNAR contains protected marine and shoreline resources that lie directly makai of easement area, and the concrete driveway constructed in the easement corridor may create a direct conduit for runoff from the property into the marine reserve. DOFAW echoes the County's comments that a drywell should be installed at the makai edge of the driveway to mitigate impacts to the reserve. A copy of DOFAW's comments is attached as **Exhibit 8**.

DAR's comments echo those of the County, and similarly suggest a drywell or swale should be installed at the base of the driveway to prevent runoff into the ocean. A copy of DAR's comments is attached as **Exhibit 9**.

In response to the DOFAW and DAR comments, Land Division accepts the assertion of DOFAW, DAR, and the County that a drywell, drainage swale or similar feature would be beneficial to the environment in this area. However, Land Division clarifies that the concrete driveway was lawfully constructed within the easement corridor after the issuance of LOD No. S-27,947 on November 4, 1992 and has been in existence since at least 2003. With respect to the existing easement, 7505 Makena is only seeking consent to assignment of the easement after the fact. There is no basis in the easement grant to condition the Board's consent to the assignment on a requirement that 7505 Makena construct a drainage feature. Such a condition might have been appropriate in the Board's decision to initially grant the easement in 1989, but not for an assignment. In Land Division's view, there is no nexus between the requested easement assignment and a new requirement to construct a drainage feature. Furthermore, although the construction of the rock planters outside of the easement area by 7505 Makena's predecessor-in-interest was unauthorized, none of the agency comments received to date suggests that the planters cause or exacerbate runoff from the paved driveway. Accordingly, staff sees no nexus between the existence of the rock planters and a requirement for a drainage feature.

In response to DOFAW's and DAR's comments regarding drainage, 7505 Makena explained that there is a box drain located on 7505 Makena's private property at the top or mauka end of the easement corridor. 7505 Makena provided a photograph of this drain, a copy of which is attached as **Exhibit 10**. 7505 Makena states that this drain prevents runoff from its private property (Parcel 85) from entering the easement area and flowing into the nearshore waters.

In any event, staff discussed the DOFAW, DAR and County comments with counsel for 7505 Makena and suggested that language be included in the easement to address the concerns of the agencies regarding the possibility of the rock planters causing an impediment to a potential future relocation Makena Road and also in the event the land

were to be incorporated into the AKNAR. Staff proposes that language substantially similar to the following be included in the easement to provide for the removal of the planters under certain circumstances:

In the event the County determines it necessary to relocate Makena Road due to sea level rise and/or other changing shoreline conditions, the State may elect to terminate the planter easement at any time prior to the end of the 50 year term (i.e., prior to June 24, 2053) and require 7505 Makena (or its successor-in-interest) to remove the rock planters at its own cost and expense. The planter easement would be issued with a two-step trigger for the grantee's obligation to remove the rock planters. First, the grantee would be notified of the appropriation of funds by the County to relocate Makena Road, which would cause the grantee to commence its preliminary preparations for removing the rock planters. Second, upon the County's execution of a contract with a contractor to complete the Makena Road relocation, the grantee would have forty-five (45) days from the receipt of notice from the County to complete its removal of the rock planters. 7505 Makena may elect to have the removal of the rock planters completed as a part of the County's relocation of Makena Road, if 7505 Makena and the County can timely agree in writing to the sharing of costs for such an undertaking. Additionally, in the event Tax Map Key: (2) 2-1-006: 077 is in the future made a part of the Ahihi-Kinau Natural Area Reserve with the necessary approvals of the Board of Land and Natural Resources and the Natural Area Reserve Commission ("NARC"), and is so set aside to NARC by Governor's executive order, the State may elect to terminate the planter easement at NARC's request on 180 days' notice to grantee, regardless of whether or not Makena Road requires relocation. Grantee would then be required to remove the planters at its cost prior to the expiration of the 180 days. Finally, in the event that the State elects to terminate the planter easement before the stated term under either of the circumstances provided for above, the grantee at that time would be refunded the pro rata portion of the fair market value consideration paid for the planter easement.

In light of the fact that the planters have been in place for at least 15 years without controversy, Land Division is recommending that the Board ratify the encroachment and allow the planters to remain in place an additional 35 years (for a total of 50 years) as requested by the applicant.

7505 Makena has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.



RECOMMENDATION: That the Board:

- A. Rescind prior Board action of March 28, 2003, under agenda item D-9.
- B. Consent after-the-fact to the Assignment of Grant of Non-Exclusive Easement under Land Office Deed No. S-27,947, from Robert R. Jacintho and Miriam M. Jacintho, Assignor, to 7505 Makena Road, LLC, Assignee, subject to the following:
  - 1. The standard terms and conditions of the most current consent to assignment form, as may be amended from time to time;
  - 2. Review and approval by the Department of the Attorney General; and
  - 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- C. Authorize the amendment of Grant of Non-Exclusive Easement, Land Office Deed No. S-27,947, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - 1. The standard terms and conditions of the most current amendment of easement form, as may be amended from time to time; provided that Section 5 of the LOD No. S-27,947 shall be amended to read substantially as follows: “The easement shall run with the land and inure to the benefit of the real property described as Tax Map Key No.: (2) 2-1-006:085, providing that the Grantee shall be required to carry liability insurance covering the easement area and comply with all other terms and conditions as provided herein, and that the Grantee, or authorized representative of the Grantee’s estate, shall notify the Grantor in writing when this easement is sold, assigned, conveyed, or otherwise transferred, and Grantee shall notify the Grantee’s successors or assigns of the insurance requirement in writing, separate and apart from this easement document”;
  - 2. Review and approval by the Department of the Attorney General; and
  - 3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interest of the State.
- D. Declare that, after considering the potential effects of the proposed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

- E. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: (2) 2-1-006:085, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
- F. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 50-year term, non-exclusive easement for concrete and rock planter purposes retroactive to June 24, 2003, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. The standard terms and conditions of the most current term easement document form, as may be amended from time to time, except that the easement shall provide for early termination under the specific circumstances discussed above;
  2. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (2) 2-1-006:085, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
  3. Review and approval by the Department of the Attorney General; and
  4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- G. Authorize the Issuance of an Immediate Right-of-Entry Permit to 7505 Makena Road, LLC over the subject land for concrete and rock planter purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
  2. The right-of-entry permit shall be effective upon 7505 Makena Road, LLC providing to Land Division: (a) a duly countersigned copy of the right-of-entry permit, and (b) evidence of the liability insurance required thereunder; and shall remain in effect until the grant of easement is

executed; and

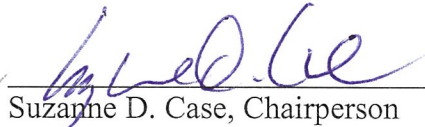
3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- H. Assess \$700.00 in administrative costs against 7505 Makena Road, LLC pursuant to Section 171-6, HRS.

Respectfully Submitted,

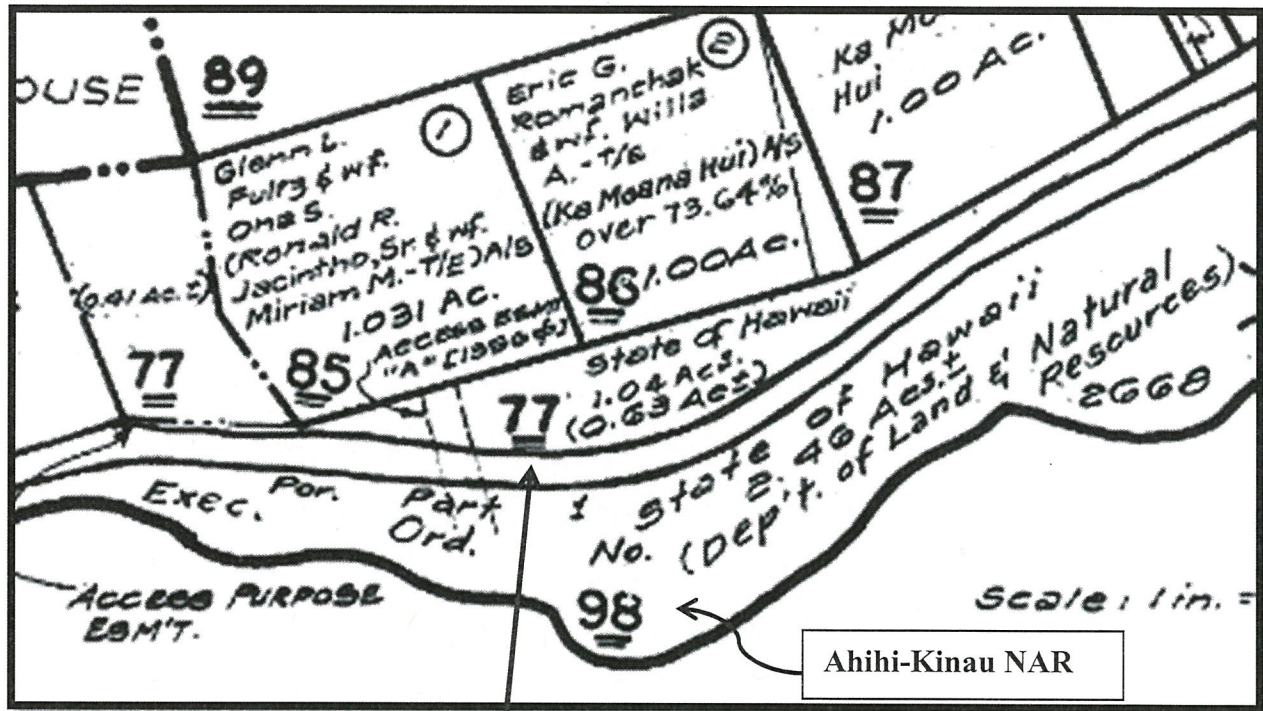


Kevin E. Moore  
Assistant Administrator

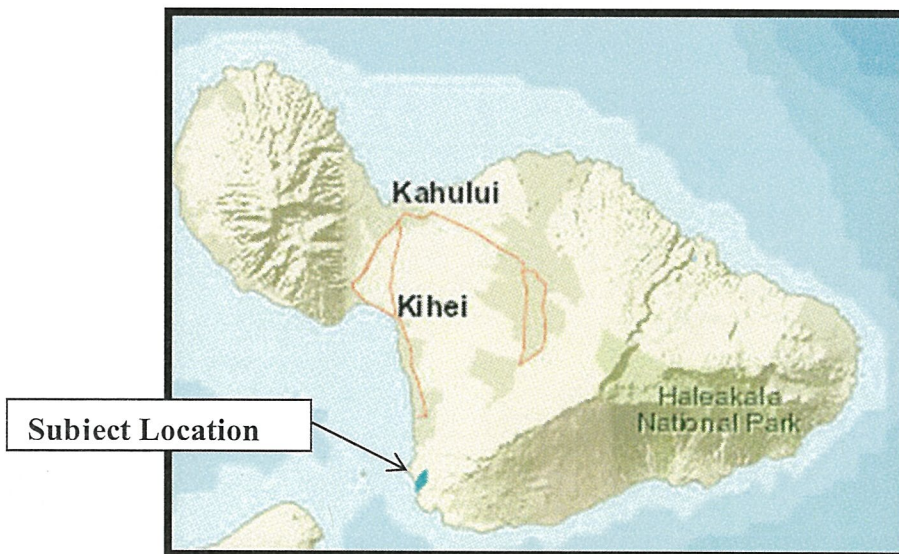
APPROVED FOR SUBMITTAL:

  
Suzanne D. Case, Chairperson





TMK No. (2) 2-1-006:077 (por.)



**Exhibit 1**



September 14, 2018

### **EXEMPTION NOTIFICATION**

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Grant of a Term, Non-Exclusive Easement to 7505 Makena for Concrete and Rock Planter Purposes; Issuance of Immediate Right-of-Entry Permit to 7505 Makena for Concrete and Rock Planter Purposes.

Project / Reference No.: PSF No. 17MD-130

Project Location; Onau, Makawao, Makena, Maui; Tax Map Key No: (2) 2-1-006: 077 (por.)

Project Description: Grant of Term Non-Exclusive Easement to 7505 Makena for Concrete and Rock Planters; Issuance of Immediate Right-of-Entry Permit to 7505 Makena.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing” and Item No. 46, that states “Creation or termination of easement, covenants, or other rights in structures or land,” and Item No. 51, that states “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing,” and Exemption Class No. 6, that states “Construction or placement of minor structures accessory to existing facilities”, and Item 9, that states “Construction of interior roadways, driveways, parking areas, sidewalks, pathways, aisles, curbs, gutters, and similar items on state lands.”

**Exhibit 2**

Cumulative Impact of Planned Successive Actions in Same Place Significant?	No further improvements to the easement area are anticipated.
Actions may have Significate Impact on Particularly Sensitive Environment?	No, the concrete and rock planters have existed on the subject lands for at least 15 years, and there have been no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area as a result.
Consulted Parties:	The County of Maui's Planning Department and Department of Public Works, DLNR's Division of Forestry and Wildlife (DOFAW), Division of Aquatic Resources (DAR), Historic Preservation Division, and Engineering Division, and the Office of Hawaiian Affairs were all consulted regarding this project. While the County Planning Department, DOFAW and DAR recommended certain measures be taken as a condition of approval of the request, none of the consulted parties opposed the proposed HRS Chapter 343 exemption.
Analysis:	The concrete and rock planters have existed on the subject state lands for at least 15 years and their initial construction fit within the Department's exemption list for minor structures accessory to existing facilities. Such use has resulted in no known significant impacts, whether immediate or cumulative, to the natural, environmental and/or cultural resources in the area. As such, staff believes that documenting the encroachment caused by the concrete and rock planters with an easement would involve negligible or no expansion or change in use of the subject area beyond that previously existing, and should therefore be exempt from the preparation of an environmental assessment.
Declaration:	That the Board find this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

March 28, 2003

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

LOD S-27947

Maui

Consent to Assign Perpetual, Non-exclusive Access and Utility  
Easement [L.O.D. No. S-27947], from Ronald R. & Miriam M. Jacintho, as Assignor, to  
First City Corp., Assignee, Onau, Makawao, Maui,  
Tax Map Key: (2) 2-1-006: Por. 077

**PURPOSE OF REQUEST:**

Consent to assignment of perpetual and non-exclusive easement [L.O.D. No. S-27016] from Ronald R. and Miriam M. JACINTHO as Assignor, to First City Corp., a Colorado corporation., whose business and mailing address is 7300 E. Arapahoe Road, Englewood, Colorado 80112, as Assignee.

**LEGAL REFERENCE:**

Section 171-13, Hawaii Revised Statutes, as amended.

**LOCATION AND AREA:**

Portion of Government Land of Onau situate at Onau, (Makena), Makwao, Maui, [see Exhibit A attached], identified as tax map key (2) 2-1-006: por. 077, consisting of approximately 1,356 square feet or 0.031 acres, more or less.

**LAND TITLE STATUS:**

Subsection 5(b) land of the Hawaii Admission Act.  
DHHL 30% entitlement:      Yes      No X

**CHARACTER OF USE:**

Right, privilege, and authority to construct, maintain, and repair access and utility easement.

**Exhibit 3**

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON *pc*  
*March 28, 2003*

ITEM D-9

**CONSIDERATION:**

None.

**REMARKS:**

The assignor acquired Grant of Easement [LOD S-27947] on November 4, 1992. The subject access and utility easement serves the privately owned tax map key (2) 2-1-006: 085. The Jacinthos are in the process of selling parcel 085 to First City Corp. and will be closing escrow soon. Consequently, they are requesting the Land Board's consent to assign LOD No. S-27947 to First City Corp.

**RECOMMENDATION:**

That the Board:

- A. Consent to the assignment of L.O.D. No. S-27947 from Ronald R. & Miriam M. JACINTHO, assignor, to First City Corp., assignee, subject to the following:
1. The standard terms and conditions of the most current consent to assignment of easement form;
  2. Review and approval by the Department of the Attorney General; and
  3. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

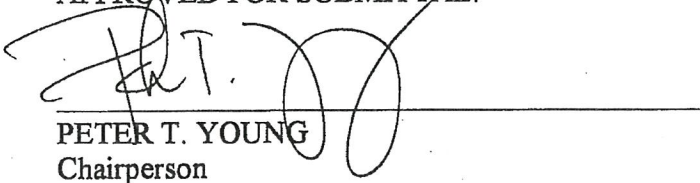
Respectfully submitted,



Louis H. Wada  
Land Agent



APPROVED FOR SUBMITTAL:



PETER T. YOUNG  
Chairperson





Parcels Drapped  
And Is Not Shown, P. 2, 4.  
27. 28. 29. 30. 31. 32. 33.  
34. 35. 36. 37. 38. 39. 40.

40, 51, 54, 55,  
 59, 71, 72, 73, 75, 76, 78, 79,  
 80, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892

[illegible]

POK. KALIMAKA, MOOKI, MOOLDA, MOOKU, MAU, NONGI, A. MAKIMMO MAU

FOR REAL PROPERTY TAXATION PURPOSES  
SUBJECT TO CHANGE

DEPARTMENT OF TAXATION  
PROPERTY ASSESSMENT DIVISION  
TAX MAPS BRANCH  
STATE OF HAWAII  
TAX MAP

SECOND TAXATION DIVISION		
ZONE	BLK	PLAT
2	1	06

SCALE: 1 IN. = AS NOTED



DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

54 High Street, Room 101  
Wailuku, Hawaii 96793  
PHONE: (808) 984-8103  
FAX: (808) 984-8111

January 29, 2018

PROJECT: Grant of Term, Non-Exclusive Easement to for Concrete and Rock Planter  
Purposes (PSF No. 17MD-130)

TMK No: (2) 2-2-006:077 (por.)

APPLICANT: 7505 Makena Road, LLC

SUBJECT: ITEMIZATION OF STAFF TIME TO RESOLVE ENCROACHMENT

Site Inspection:		
District Land Agent	3 hours x \$65.00/hr.* =	\$195.00
Land Agent	6 hours x \$45.00/hr.* =	\$270.00
Report Compilation:		
District Land Agent	1 hour x \$65.00/hr.* =	\$ 65.00
Land Agent	3.7 hours x \$45.00/hr.* =	\$166.50
<b>TOTAL:</b>		<b>\$696.50, or \$700.00</b>

NOTE: \*Hourly rates include fringe benefits

**Exhibit 5**



17/5876

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

DEPT. OF PLANNING  
COUNTY OF MAUI

OCT 23 2017

RECEIVED

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

October 18, 2017

LOD No. S-27,947  
Author: LD/lm

MEMORANDUM

TO:

State Agencies:

- ☐ DOH
- ☐ DHHL
- ☐ DLNR-Aquatic Resources
- ☒ DLNR-Forestry & Wildlife
- ☒ DLNR-Historic Preservation
- ☐ DLNR-State Parks
- ☐ DLNR-Conservation and Coastal Lands
- ☐ DLNR-Water Resource Management
- ☒ DLNR - Engineering

County Agencies:

- ☒ Planning
- ☐ Parks & Recreation
- ☒ Public Works
- ☐ Water Department

Federal Agencies:

- ☐ Corps of Engineers
- ☐ NRCS

Other Agencies:

- ☒ Office of Hawaiian Affairs

FROM:

Lydia Morikawa, Special Projects & Development Specialist

SUBJECT:

Request for Comments re: Draft Board Submittal – Rescind Prior Board Action of March 28, 2003, Item D-9; After-the-Fact Consent to Assignment of LOD No. S-27,947; Amend LOD No. S-27,947 to Allow the Easement to Run with the Land; Grant of a Term, Non-Exclusive Easement; Issuance of an Immediate Right-of-Entry and Assess \$500.00 in Administrative Fees

LOCATION:

Onau, Makawao, Makena, Maui; TMK No. (2) 2-1-006:077 (por.)

APPLICANT:

7505 Makena Road LLC

Transmitted for your review and comment is a copy of the above referenced request involving State lands. We would appreciate your comments on this application. Please submit any comments by **November 17, 2017**. If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact my office at (808) 587-0426. Thank you.

Attachment

- ☐ We have no objections.
- ☒ We have no comments.
- ☐ Comments are attached.

**Exhibit 6**

Signed:

Date:

*James A. Bullock*  
11/17/17

cc: Central Files  
District Files

*see attached comment*

*JAMES A. BULLOCK Planning Dept.*



*Comments submitted  
on 10/17/17*  
*James Buika*

November 17, 2017

County of Maui Department of Planning Comments on  
DLNR Land Division, Request for Comment, LOD No. S-27, 947  
7505 Makena Road

COUNTY OF MAUI  
DEPT. OF PLANNING  
CURRENT DIV. RECEIVED

Submitted by James Buika, Planner Maui County Planning Dept.

17 NOV 17 P3:09

On October 23, 2017 the Department of Planning received your Request for Comment, LOD No. S-27, 947, for the driveway across state land to access 7505 Makena Road, Maui, Hawaii, dated October 18, 2017.

On November 16, 2017, myself, James Buika, Shoreline Planner, Maui County, visited the subject property, and examined the easement condition. I have taken many pictures of the situation if you need them. There is a metal gate that runs at the roadside, on the state land, at the makai end of the driveway that is not mentioned as part of the easement. There is a substantial privacy gate at the property boundary, at the mauka end of the state easement. The driveway is long and wide and sloped towards the road and ocean, which is very close to the road.

The environmental setting is very sensitive along the ocean front road in the area. The parcel is actually within the area known as the Ahihi-Kinau Protected Area.

The Department agrees that the State can allow access across this easement to the private parcel with the following recommended conditions:

- 1) That the applicant construct and add a small engineered dry well at the base of the driveway slope where it intersects Makena Road with the purpose of intercepting rainwater runoff from the driveway. As an alternative, add an engineered concrete drainage way or swale so that the runoff drains mauka of Makena Road and not across Makena Road, as it does now. See Picture 1.
- 2) That DLNR consider requesting that the applicant remove the metal swinging gate, if not needed, since there is a privacy gate at the mauka end of the driveway crossing the state land. This mitigation action allows for the driveway to be used as an "emergency shoulder" for automobiles or emergency vehicles, in certain circumstances. See picture 2.
- 3) That the applicant clearly understand that there is a substantial state parcel fronting their property that can be used for the public interest and public trust in the future, to include public parking for access to the Ahihi-Kinau protected area, along Makena Road, fronting the applicant's parcel. The applicant must understand that their parcel fronts a state parcel. See picture 4.

The following pictures are provided to support the comments and conditions above:

Picture 1: Driveway area intersection at Makena Road where dry well or retention basin can be constructed on driveway to capture or divert runoff that now goes into ocean.

Picture 2: Driveway with metal swinging metal gate, looking south the State Parcel.

Picture 3: Length of driveway with curb looking towards southeast.

Picture 4: State parcel fronting applicant's driveway, which is located at palm tree area.

Maui County Comments, 11.17.17, DLNR Land Division, Request for Comment, LOD No. S-27  
7505 Makena Road



①

Maui County Comments, 11.17.17, DLNR Land Division, Request for Comment, LOD No. S-27  
7505 Makena Road





②

Maui County Comments, 11.17.17, DLNR Land Division, Request for Comment, LOD No. S-27  
7505 Makena Road





③

Maui County Comments, 11.17.17, DLNR Land Division, Request for Comment, LOD No. S-27  
7505 Makena Road





④

Maui County Comments, 11.17.17, DLNR Land Division, Request for Comment, LOD No. S-27  
7505 Makena Road

---

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

INSPECTION REPORT FOR VACANT PROPERTY

TAX MAP KEY:       (2) 2 1 006 077 PSF 10MD-205      

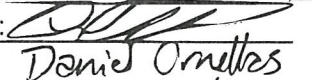
Inspection date:       11/24/17       Inspection time:       11:00 am      

1. Explain the physical condition including any improvements (ie grass overgrown, wiliwili trees, abandon vehicles, clogged concrete lined ditch, broken chain link fence, etc.):         
On November 24, 2017 at 11:00 a.m., District Land Agent Daniel Ornellas and I inspected tmk 221006077 which is located makai of tmk 221006085 at 7505 Makena Road. The improved parcel (tmk 221006085) has a perpetual non-exclusive easement, a driveway, across tmk 221006077 which provides the sole legal access to the parcel from Makena Road. There is a metal gate at the bottom of the driveway which appears to not be in use due to shrubbery overgrowth. There are landscaping, lights, and large lava rock planters adjacent to the driveway which exceed the boundaries of the easement and therefore encroach on the State land. There are bougainvillea hedges and low lying shrubbery on either side of the driveway, as well as two large lava rock planters with palm trees at the base of the driveway. On the gravel portion of the subject parcel there is a hibiscus hedge along a portion of the roadway. There is also a metal gate at the south end of the hibiscus hedge.

2. Is maintenance is required? (ie cut grass, tree removal, install government signs, etc.)         
Recommend that the owner 1) remove the gate at the bottom of the driveway because the easement is non-exclusive; 2) cut down the bougainvillea hedges adjacent to the driveway because they obstruct the sightlines from the road and they seem out of character for the area; 3) remove the lights because they are not necessary; 4) remove the lava rock planters because they are not needed and they make the driveway appear to be private property; 5) leave in place the low-lying native shrubbery adjacent to the driveway; 6) remove the hibiscus hedge because it makes the gravel area appear to be private property, and place suitable rocks native to the area to block vehicular access; and 7) leave the metal gate between the road and gravel area in place because it can be used by DLNR staff in case they need to use the gravel area for parking or a staging area. Also recommend the property owner be asked to construct a dry well or retention basin at the base of the driveway to capture or divert runoff that now goes into the ocean, pursuant to County Planner James Buika's comments dated November 17, 2017, appended to this report as Exhibit A.

3. Completed by:       Seiko Machida      

Date:       11/24/17      

Reviewed by:   
      Daniel Ornellas        
      12/4/17      

**Exhibit 7**





Maui County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change.





1) One-half of metal gate at base of driveway, overgrown by shrub



2) bougainvillea hedge blocking sightline



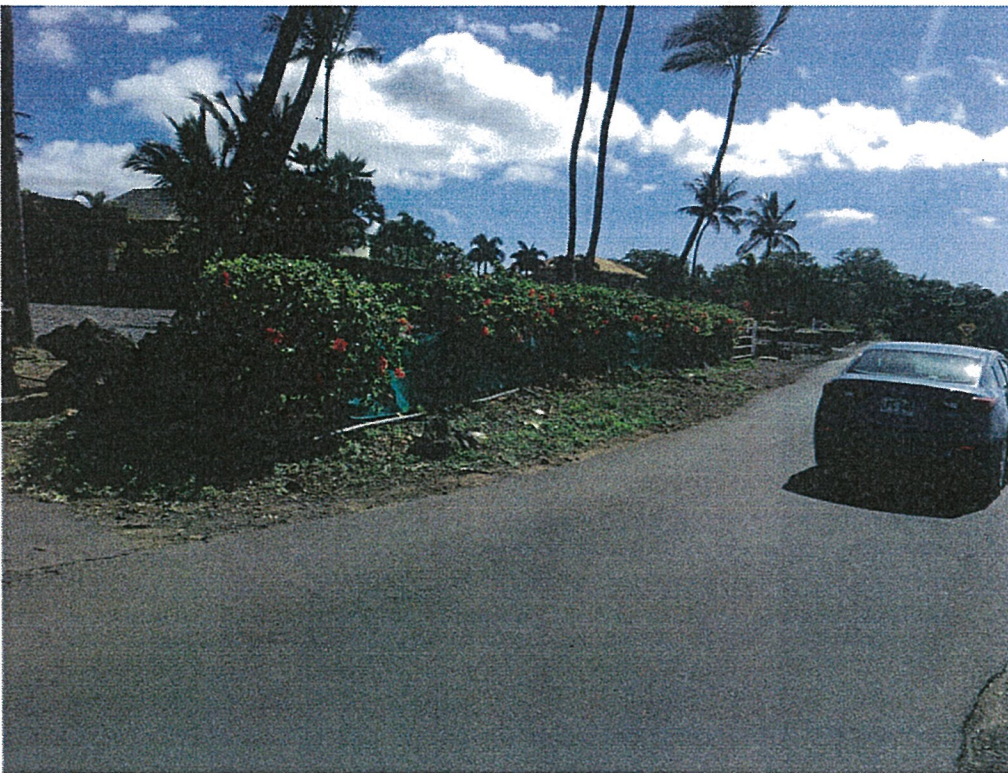


3) lights and 5) low-lying shrubbery adjacent to driveway





4) one of the lava rock planters at base of driveway



6) hibiscus hedge along roadway, adjacent to gravel area





7) metal gate at south end of hibiscus hedge, adjacent to gravel area

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

February 8, 2018

MEMORANDUM

TO: *FROM:*

DLNR Agencies:

- ☒ Div. of Aquatic Resources
- ☐ Div. of Boating & Ocean Recreation
- ☐ Engineering Division
- ☒ Div. of Forestry & Wildlife
- ☐ Div. of State Parks
- ☐ Commission on Water Resource Management
- ☐ Office of Conservation & Coastal Lands
- ☐ Land Division – Maui District
- ☐ Historic Preservation

FROM: *TO:*

Russell Y. Tsuji, Land Administrator

SUBJECT:

DRAFT Board Submittal – Rescind Prior Board Action of March 23, 2013, Item D-9; After-the-Fact Consent to Assignment of LOD No. S 27,947 to Allow the Easement to Run with the Land; Grant of a Term, Non-Exclusive Easement; Issuance of an Immediate Right-of-Entry and Assess \$500.00 in Administrative Fees

LOCATION:

Onau, Makawao, Makena, Island of Maui; TMK: (1) 2-1-006:077 (por.)

APPLICANT:

7505 Makena Road LLC

Transmitted for your review of any negative impacts to the Ahihi-Kinohi Natural Area Reserve and marine environment. We would appreciate your comments by **March 1, 2018**.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Lydia Morikawa at 587-0410. Thank you.

- ( ) We have no objections.
- (✓) We have no comments.
- (✓) Comments are attached.

Signed:

Print Name:

Daniel G. Smith

Date:

2/14/18

Attachments

cc: Central Files

**Exhibit 8**

RECEIVED  
LAND DIVISION  
2018 FEB 23 AM 10:50  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII



DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
HONOLULU, HAWAII 96809

FEB 22 2018

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIHOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**MEMORANDUM**

**TO:** Russell Y. Tsuji, Administrator  
Land Division

**FROM:** David G. Smith, Administrator *DGS*

**SUBJECT:** Board Submittal, re: 7505 Makena Road LLC, requesting to:

Rescind Prior Board Action of March 28, 2003, Item D-9, *Consent to Assign Perpetual, Non-exclusive Access and Utility Easement [L.O.D. No. S-27947], from Ronald R. & Miriam M. Jacintho, as Assignor, to First City Corp., Assignee; Tax Map Key No: (2) 2-1-006: Por. 077*

After-the-Fact Consent to Assignment of Grant of Non-Exclusive Easement under Land Office Deed No. S-27,947, from Ronald R. Jacintho and Miriam M. Jacintho, Assignor, to 7505 Makena Road, LLC ("7505 Makena"), Assignee; Amend Land Office Deed No. S-27,947 to allow the Easement to Run with the Land and Inure to the Benefit of the Private Property Designated as Tax Map Key: (2) 2-1-006:085;

Grant of a Term, Non-Exclusive Easement to 7505 Makena for Concrete and Rock Planter Purposes; Issuance of Immediate Right-of-Entry Permit to 7505 Makena for Concrete and Rock Planter Purposes; Assess \$700.00 in Administrative Costs Against 7505 Makena for Staff Time in Resolving Encroachment; Onau, Makawao, Makena, Maui; Tax Map Key No: (2) 2-1-006: 077 (por.)

Thank you for the opportunity to provide comments on the subject draft board submittal. The following comments concern potential impacts of the requested action on access to the 'Āhihi-Kīna'u Natural Area Reserve and other lands east of the subject property.

The state land parcel for which this board submittal requests approval to grant an easement upon, identified as TMK No: (2) 2-1-006: 077, lies directly adjacent to portions of Makena Road that provide public access to the 'Āhihi-Kīna'u Natural Area Reserve

Russel Tsuji  
Comments re 7505 Makena Road

(AKNAR) and points beyond, including La Perouse Bay and private properties. At this and other locations, Makena Road passes very near to the shoreline, where sea level rise, erosion, and changing shoreline conditions threaten the road and the ability of the public to pass to AKNAR and point points beyond.

Ocean waters currently occasionally wash up onto the road, leaving sands and stones, and sea conditions or weather events damaging or destroying the road, or otherwise precluding passage, would appear to be inevitable. When this occurs, passage across the state parcel will be the only practical legal route for continued access to AKNAR and points beyond, both immediately and in the long term, should a relocation of the road become necessary. Therefore, any uses of the state land identified as TMK No: (2) 2-1-006: 077 should not obstruct or preclude the ability of the state to provide for these future uses.

Our assessment of this perpetual non-exclusive easement indicates that certain proposed uses would obstruct the ability of the state to provide for public access across the state parcel, should the need arise. In particular, installation of landscaping, lights, and large lava rock planters adjacent to the easement's boundaries, as well as the placement or planting of trees or vegetation on the state parcel, create obstructions. We suggest that the perpetual non-exclusive easement for access and utility easement should solely provide for a driveway to the boundary of the 7505 Makena LLC property, and that no obstructions of any kind should be permitted across the easement and upon the state parcel identified as TMK No: (2) 2-1-006: 077.

In addition, AKNAR contains protected marine and shoreline resources that lie directly makai of the 7505 Makena LLC property that the proposed easement is requested to serve. A concrete driveway placed upon the easement, providing a direct connection to the road, may create a direct conduit for runoff from the property to empty into the marine reserve. In order to minimize this risk, the driveway should be porous or placed flat to the substrate surface, with a dry well or similar to capture water runoff at the base of the driveway, or employ other measures to avoid the risk of impacts to the reserve.

Should you need more information, please contact Fern Duvall NEPM-Maui Nui Program Manager @ (808) 873-3502 or email at [fern.p.duvall@hawaii.gov](mailto:fern.p.duvall@hawaii.gov).



5688

DAVID Y. IGE  
GOVERNOR OF HAWAII



RECEIVED

FEB 14 2018

Division of Aquatic Resources

DAR 5688

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

February 8, 2018

MEMORANDUM

TO:

**DLNR Agencies:**

☒ Div. of Aquatic Resources

☐ Div. of Boating & Ocean Recreation

☐ Engineering Division

☒ Div. of Forestry & Wildlife

☐ Div. of State Parks

☐ Commission on Water Resource Management

☐ Office of Conservation & Coastal Lands

☐ Land Division – Maui District

☐ Historic Preservation

FROM:

Russell Y. Tsuji, Land Administrator

SUBJECT:

DRAFT Board Submittal – Rescind Prior Board Action of March 23, 2013, Item D-9; After-the-Fact Consent to Assignment of LOD No. S 27,947 to Allow the Easement to Run with the Land; Grant of a Term, Non-Exclusive Easement; Issuance of an Immediate Right-of-Entry and Assess \$500.00 in Administrative Fees

LOCATION:

Onau, Makawao, Makena, Island of Maui; TMK: (1) 2-1-006:077 (por.)

APPLICANT:

7505 Makena Road LLC

Transmitted for your review of any negative impacts to the Ahihi-Kinau Natural Area Reserve and marine environment. We would appreciate your comments by **March 1, 2018**.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Lydia Morikawa at 587-0410. Thank you.

( ) We have no objections.

( ) We have no comments.

(x) Comments are attached.

Signed:

*Bruce S. Anderson*

Print Name: Bruce S. Anderson, PhD, DAR Administrator

Date:

2/23/18

Attachments  
cc: Central Files

**Exhibit 9**

DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET, ROOM 330  
HONOLULU, HAWAII 96813

Date: 2/22/2018

DAR #5688

SUZANNE B. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSIONER OF WATER RESOURCES AND MANAGEMENT

ROBERT K. MASUDA  
COMMISSIONER

JUDITH T. PEARSON, P.E.  
DEPUTY COMMISSIONER WATER

SPRING RESOURCES  
BOATING AND ANCHORAGE REGISTRY  
BUREAU OF CONSERVATION  
COMMISSIONER OF WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES DEPARTMENT

DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET, ROOM 330  
HONOLULU, HAWAII 96813

RECEIVED  
LAND DIVISION  
FEB 27 11:04 AM

MEMORANDUM

TO: Bruce S. Anderson, PhD  
DAR Administrator

FROM: Russell Sparks , Aquatic Biologist

SUBJECT: Board Submittal for a Non-Exclusive Easement through State Lands in Makena, Maui

Request Submitted by: Russell Y. Tsuji, Land Administrator

Location of Project: Makena Maui - TMK#(1)2-1-006:077

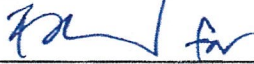
Brief Description of Project:

Draft board submittal seeking to rescind prior board actions taken in March 28, 2003 and to grant an after-the-fact consent to assignment of grant of a non-exclusive easement across state land just mauka (northeast) of the road and very near the ocean in the area of Makena, Maui. The property in question appears to be either within or very near the northwestern end of the Ahihi Kinau Natural Area Reserve (NAR). The easement also appears to include an existing concrete driveway and rock planter landscaped area which have not been previously approved and could have runoff concerns to the nearshore marine waters and that could have other concerns with the overall use of the state lands by the public who visit the area.

Comments:

☐ No Comments ☒ Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved:  Date: 2/23/18  
Bruce S. Anderson, PhD  
DAR Administrator

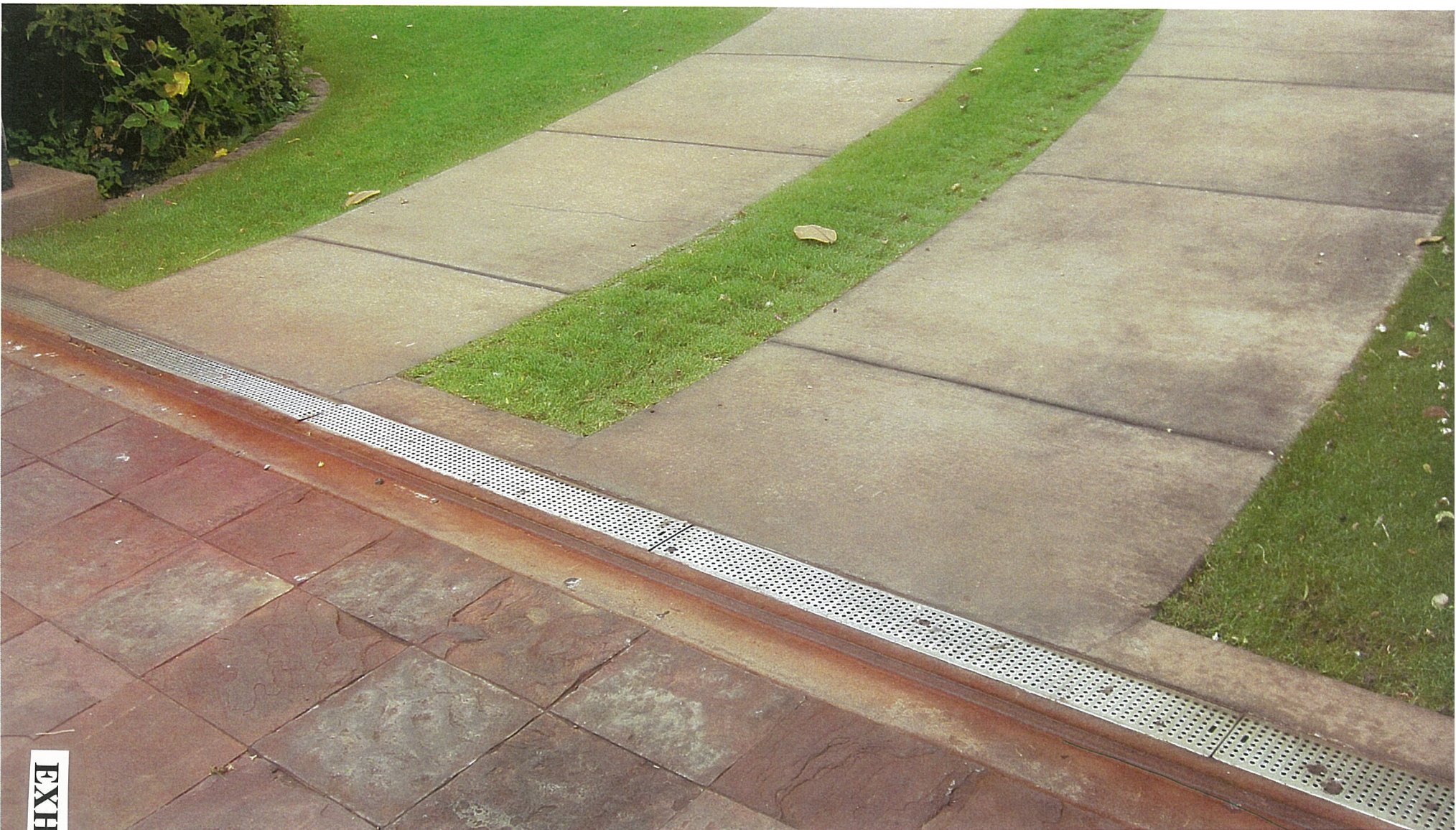


DAR# 5688

Comments

Given the location of this property within and/or very near the Ahihi Kinau NAR, it is critical that we hold the landowners responsible for any impacts that may occur to the nearshore waters as a result of their actions on this easement. We therefore, agree with the concerns expressed by the County of Maui regarding the concrete driveway and the drainage of runoff created by this driveway. Currently, it is likely that any runoff coming down the driveway will lead directly onto the roadway and then into the marine coastal waters. The county has suggested a drainage sump or dry well be constructed to prevent this runoff. We agree this is an appropriate requirement, but if it is not feasible to excavate a dry well, it may be possible to change the slope on the driveway to force all runoff into the rock planter area. In this way, these state lands could serve both as a nice landscaped buffer between the private property and the roadway, but also as a rain-garden bio-swale area that could retain runoff and prevent it from flowing directly into the ocean. The runoff could then slowly percolate into the ground rather than runoff into the ocean. Other than our concerns over the runoff from the concrete driveway, we have no other concerns with the plans to grant this non-exclusive easement.





**EXHIBIT 10**